STATE OF MADHYA PRADESH & ORS.

v.

ORIENT PAPER MILLS LTD:

November 23, 1976

[H. R. KHANNA AND V. R. KRISHNA IYER, JJ.]

Madhya Pradesh General Sales Tax Act, 1958—Lease of forest area—Timber extracted from leased area—If liable to sales-tax.

Under s. 2(g) of the Madhya Pradesh General Sales Tax Act the term 'goods' means all kinds of movable property and includes all growing crops, trees, plants and things attached to, or forming part of the land which are agreed to be severed before sale or under the contract of sale. Under cl. (n) 'Sale' means any transfer of property in goods for cash or deferred payment. Clause (o) defines 'sale price' as the amount payable by a dealer as valuable consideration for the sale of goods and under cl. (t) 'turnover' means the aggregate of the amount of sale price received and receivable by a dealer.

The respondent Mills entered into a lease with the Forest Department of the State for the cutting of bamboo and salai wood from the leased forest area in the State. The lease deed provided that the lessee shall pay a minimum royalty every year whether there was cutting of timber or not, the lessee could construct roads, railways etc. for the purposes of business; should pay the price fixed for the wood removed from the leased area; should keep an account of all wood cut and removed and that the rights and privileges of the lessees shall extend only to bamboos and salai wood within the leased area.

The appellant (Forest Department) which was a registered dealer under Sales Tax Act demanded from the respondent, (also a registered dealer) sales tax in respect of timber extracted from the leased area. When the respondent repudiated the Department's claim it paid the tax and proceeded to recover the tax under the revenue recovery proceedings under s. 82 of the Indian Forests Act.

Allowing the respondent's writ petition under Art. 226 of the Constitution the High Court held that the State Government and its Forest Departments were not a 'dealer' within the meaning of the sales tax law and as such were not entitled to recover the amount from the respondent. Thereupon the definition of the dealer under the Act was altered to undo the effect of the High Court's decision.

In appeal to this Court the appellant contended that though apparently the transaction was a lease, in reality the lease was no more than a simple sale of standing timber, coupled with a licence to enter and do certain things on another's land and the transaction in essence was a sale of goods within the meaning of the Act.

Allowing the appeal to this Court,

HELD : Going by the definition of 'sale of goods' under s.2(7) of the Sale of Goods Act and s. 2(g) of the Sales Tax Act standing timber is 'movable property' if under the contract it is to be severed. But the severence must take place when the timber still vests in the contracting party. [158D]

In the instant case there was sale of bamboo and salai wood under the contract and, in the contemplation of the parties they were to be cut and severed pursuant to the contract itself.

Raja Bahadur Kamakshya Narain Singh (1943) 11 I.T.R. 513; *Badri Prasad* [1969] 2 S.C.R. 380 held inapplicable.

A 1. (a) Despite its description, the deed conferred in truth and substance a right to cut and carry timber of specified species. Till the tress were cut, they remained the property of the appellant. Once the trees were severed, the property passed. Royalty is a euphemism for the price of the timber. [157D]

(b) From the terms of the lease it was clear that for a price fixed, bamboo and salai wood were permitted to be removed by the respondent from the forest of the appellant. Possession of the land *qua* land was not given and there was a provision that the rights of the lessess *shall extend only* to bamboos and salai B wood within the leased area and nothing therein shall in any way be deemed to authorise the lessees to interfere with the working of the forest area of *other contractors* of the forest lands. [157A-B]

(2) The amending bill, whereby the liability was being *de novo* fastened, was enacted into law after the judgment of the High Court. Read with s. 82 of the Indian Forests Act, the amount was being recovered as if it were land revenue. This process deprived the respondent of his right to challenge the C qualification of the tax. The respondent should be enabled to prove his case that the sum claimed was much higher than could be legitimately recovered. [159B]

[The case was remanded for consideration of the quantum of tax that the Forest Department was legally liable to pay as a dealer, to the Sales Tax Department. Once the tax is settled the payment by the respondent will follow.]

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 49 of 1972.

Appeal from the Judgment and Order dated 24th December, 1970 of the Madhya Pradesh High Court in Misc. Petition No. 474/68.

Ram Panjwani, H. S. Parihar and *I. N. Shroff* for the Appellants.

B. Sen, (Mrs.) Leila Seth, T. M. Sen, Praveen Kumar and *O. P. Khanan* for Respondent.

E The Judgment of the Court was delivered by—

KRISHNA IYER, J. The State of Madhya Pradesh, blessed with abundant forest wealth, whose exploitation, for reasons best known to that government, was left in part to the private sector, *viz.*, the respondent, Orient Paper Mills, which is the appellant in this appeal by certificate. The subject matter of this litigation, however, is the F competency to collect sales tax from the respondent for the bamboo and salai wood extracted by it, under a transaction relating to some government forests in Vindhya Pradesh which, on 'states reorganisation' in 1956, became part of Madhya Pradesh. The transaction itself was dressed up as a lease-deed executed by the then State of Vindhya Pradesh on August 4, 1956 in favour of Orient Paper Mills, the respondent herein. At that time no sales tax could be levied under G the law from the forest department of the appellant State or the respondent mills. However, on April 1, 1959 the M. P. General Sales Tax Act, 1958, (hereinafter referred to acronymically as M.P.G.S.T. Act) came into force. On the footing that the Forest Department was a dealer it got itself registered as such, under the sales tax law, on November 3, 1962. The respondent, of course, is a registered dealer under the same law. Subsequently, the Chief Conservator of H Forests, representing the appellant, demanded of the respondent that it pay sales-tax on the timber extracted under the 'lease deed', whereupon the claim was repudiated by the respondent. In consequence,

the appellant proceeded to levy the sum representing the sales-tax on the value of the timber cut and removed as per the terms of the contract, resorting to revenue recovery proceedings authorised by Sec. 82 of the Indian Forest Act. Thereupon the respondent moved the High Court for the issuance of a writ under Art. 226 of the Constitution of India against the State to forbear from collecting sales tax illegally. Holding that the State Government and its Forest Department were not dealers within the sense of the sales tax law, the writ petition was allowed, notwithstanding the adverse findings against the petition-respondent on some other vital points.

The State has challenged this finding in the appeal before us. The validity of the attempted exaction is the gut issue in these proceedings, although the centre of gravity on this forensic stage has shifted from the question of the forest department being a dealer to whether the transaction styled 'lease' does at all involve sale of goods. From 'no dealer, no sales tax' to 'no sale no sales tax' is the shift in the epicentre of the argument caused by an amendment to the sales tax statute legislated after and on account of the very judgment under appeal. Suffice it to say for the present, no sale, no sales tax is a legal truism.

It may be mentioned right here that the respondent before us is not *directly* liable to pay sales tax, even assuming that the 'lease deed' involves sale of goods. The forest department of government is admittedly a registered dealer for the relevant period, and it is claimed by the appellant State that it was liable *qua* dealer to pay tax on sales of timber, and by virtue of s. 64-A of the Sale of Goods Act such sums, which became leviable only after the agreement was entered into in 1956, could be recovered from the purchaser-respondent. It is virtually admitted in this appeal, as stated earlier, that both parties are registered dealers under the relevant sales tax Act. Nor is it in dispute that if the appellant forest department were liable to pay sales tax for the sales of timber which were alleged to have taken place, the respondent, in turn, would be liable to make good that sum in view of the plain provision in s. 64A of the Sale of Goods Act. But to attract that provision there has to be sale of goods. Was there any sale of wood under the lease deed ? That is the core of the legal quarrel agitated before us.

We may straight proceed to consider the questions canvassed before the High Court since both sides have had to challenge one or other of the findings. We may borrow the formulation of the four points set out in the judgment of the High Court.

"(i) The transaction is not a sale of goods and no sales tax is payable in respect of bamboos and salai wood extracted thereunder by the petitioner.

(ii) No sales tax is payable under the terms of the lease deed dated August 4, 1956 and, therefore, such tax cannot be recovered.

(iii) Neither the State Government nor the Forest Department of that Government is or could be a dealer and for this reason also no sales tax is payable or recoverable.

A (iv) The sales tax, even if payable, is not recoverable as arrears of land revenue, particularly when the revenue recovery certificate was issued by the Divisional Forest Officer."

The time is set true for stating the decisive statutory changes which occurred after the High Court ruled against the State, calculated to undo the disability discovered by that pronouncement. This development deserves attention as the sole point on which the State lost B in the High Court, viz. that the Forest Department is not doing business, ceases to have relevance today on account of the amendment to the Madhya Pradesh General Sales Tax Act by the MPGST (Amendment and Validation) Act 13 of 1971. The definition of 'dealer' and other related provisions were touched up and redefined in such manner that the finding on point No. 3 formulated by the High C Court was effectively nullified. Indeed, the legislation is a sequel to the decision and has squarely undone the impediment in the way of the State collecting sales tax from the respondent. So long as that law holds good the State's claim cannot be bowled out. Of course, Sri B. Sen, for the respondent, desired to challenge the *vires* of the Amending Act but the Presidential Proclamation during the Emergency, suspending the operation of Art. 14, handcuffs the respondent D from seeking to strike down this legislation. When the Presidential Proclamation, sterilising Art. 14, lapses then it may be time enough to assail this law. So far as this appeal is concerned, Art. 14 is under eclipse and the ground of challenge unavailable. The amendatory provisions must therefore be held impregnable, on this score, and we proceed on that footing. Its post-Emergency validity will be decided, if attacked, at that time, since we leave that aspect untouched. To E abbreviate the discussion, thanks to Act 13 of 1971, the Forest Department of the State shall be deemed to be dealer. If it is a dealer, the levy of sales-tax from it is legal and the controversy on this score is silenced.

The meat of the matter is the judicial determination of the true character of the transaction of 'lease' from the angle of the MPGST F Act and the Sale of Goods Act whose combined operation is pressed into service for making the tax exigible from the Forest Department and, in turn, from the respondent mills. It is the part of judicial prudence to decide an issue arising under a specific statute by confining the focus to that statutory compass as far as possible. Diffusion into wider jurisprudential areas is fraught with unwitting conflict or confusion. We, therefore, warn ourselves against venturing into the G general law of real property except for minimal illumination thrown by rulings cited. In a large sense, there are no absolutes in legal propositions and human problems and so, in the jural cosmos of relativity, our observations here may not be good currency beyond the factual-legal boundaries of sales-tax situations under a specific statute.

The major plea to bomb the tax demand having been shot down by retroactive legislative missiles, the respondent has sought a manouvre H to victory by reliance on the contention covered by formulation no. 1 set out at the beginning. Point 2 hinges on the result of point no. 1 and deserves no separate discussion.

The High Court's holding on these twin points is in favour of the respondent on the basic submission of non-exigibility of tax on the score that the transactions in question are not sales at all and the payments not price of goods at all but mere royalty under a lease. A

A short legal survey will take us to an easy solution of this issue. Section 64A of the Sale of Goods Act enables the seller, under certain circumstances, to recover, as sale price, any sales tax which the vendor has had to pay. So, if in the present case, the Forest Department of the State is liable to pay sales tax on the bamboo and salai wood cut and removed by the respondent, the claim to recover it from the buyer is good under the said s.64A. The next logical series of questions are whether the Forest Department is liable to sales tax on the timber covered by demise? Can the timber so extracted and the royalty paid at the rates stipulated be called goods and sale price respectively under Sec. 2(o) of the MPGST Act? Can the levies made by the Forest Department become its turnover of sales under Sec. 2(t)? Does removal of timber by the lessee constitute sale of goods under s. 2(n) of the MPGST Act or s. 64A of the Sale of Goods Act? B C

The ignition point which sets in motion the chain reaction is the character of the transaction whereby bamboo etc. are cut and removed and money paid, measured by the weight of the timber extracted. If it is a sale the tax is leviable from the Forest Department and the amount, in turn, recoverable from the lessee—and *vice versa.* D

We must set out parts of the 'lease deed' so that its basic structure and essential nature may be decoded. Is it really a lease of forest or is it a sale of certain timber with ancilliary licences? No doubt, the deed styles itself a lease. But it is argued that a *soi disant* lease may well be a mere contract of sale of goods. Theoretically, this is perfectly possible in law, as in literature: 'What's in a name? that which we call a rose/By any other name would smell as sweet'! E

But what is there in the document to detract from the *prima facie* validity of the label? Here the clarity of the reasoning lies in the correct approach to the question—which is not so much whether the contract is one of lease but whether it works out a sale of goods under the two concerned statutes. F

Sales tax is payable by a dealer. The Forest Department, by force of the statutory amendment, is admittedly a dealer. Such tax is computed on the turnover as defined in s. 2(t) of the MPGST Act, which reads: G

> "2. In this Act, unless there is anything repugnant in the subject or context,—
>
> x x x x
>
> (t) 'turnover' used in relation to any period means the aggregate of the amount of sale prices received and receivable by a dealer in respect of any sale or supply or distribu- H

A tion of goods made during that period, whether or not the whole or any portion of such turnover is liable to tax but after deducting the amount, if any refunded by the dealer to a purchaser, in respect of any goods purchased and returned by the purchaser within the prescribed period."

The essential ingredients of turnover are thus 'sale of goods' and B 'sale prices'. The latter concept has received definitional expression in s.2(o) and the former in s.2(n). They may be read here :

"(o) 'sale price' means the amount payable to a dealer as valuable consideration for the sale of any goods, less any sum allowed as cash discount according to ordinary trade practice but including any sum charged for anything done by the dealer in respect of the goods at the time or before de- C livery thereof other than the cost of freight or delivery or the cost of installation when such cost is separately charged and the expression 'purchase price' shall be construed accordingly.

(n) 'Sale' with all its grammatical variations and cognate expressions means any transfer of property in goods for D cash or deferred payment or for other valuable consideration and includes a transfer of property in goods involved in the supply or distribution of goods by a society or club or any association to its members, but does not include a mortgage, hypothecation charge or pledge, and the word 'purchase' shall be construed accordingly;"

E For all these words to apply, the pivotal factor is 'goods' which is defined in substantially similar manner in both the Sale of Goods Act and in s. 2(g) of the MPGST Act which latter reads :

"2(g) "goods" means all kinds of movable property other than actionable claims, newspapers, stocks, shares, securities or Government stamps and includes all materials, articles and commodities whether or not to be used in the construction, F fitting out, improvement or repair of movable or immovable property; and also *includes all growing crops, grass, trees, plants* and things attached to, or forming part of the land *which are agreed to be severed before sale or under the contract or sale;"*

G The key expressions which unlock the mystique of turnover-cum-sale of goods are the last inclusive limb of the clause 'also includes.... trees which are agreed to be severed under the contract of sale'. The crunch issue thus is whether the self-styled lease deed is in substance a contract of sale of timber.

H The true import of the document may be gathered from its terms, not from rulings on other documents. There is a serious limitation on the service of case law in this area. It depends firstly on the actual issue in each case and the angle of vision adopted and secondly on the clauses, purposes and surrounding circumstances of each tran-

saction. While, therefore, we may cite some rulings later we bear in mind the limits of their use. A

Shri Sen rightly stressed the importance of the deliberate description of the deed as a lease. He drew our attention, with emphasis, to annual payments of *royalty,* not price. Royalty has a slight fedual flavour with a tell-tale *demise* relish, if we may say so, while price is a mercantile concept smacking of commercial relations. B

By the deed, the forest lands of the lessor are *'hereby demised'.* There are frequent references to the 'leased area'. The period of the lease is stated to be a long 20 years, later substituted by 30 years. There is also reference to discharge of lease, royalties, compensation and other monies, suggestive of a demise rather than of a sale. The provision for payment of a minimum royalty runs in these terms : C

> "Provided that the minimum royalty payable by the lessees to the State Government during the first year of this lease shall not be less than 1.5 lakhs of rupees and for the next and subsequent years, shall, during the term of this demise, be not less than two lakhs of rupees per annum."

Whether there is cutting of timber or not, Shri Sen argues, the minimum royalty has to be paid, thus showing that the provision for payment is sometimes de-linked from the exploitation of the forest or the value of the timber cut. D

Considerable reliance was placed for taking the document out of the category of mere sale of goods, on clause 5 of the Deed, which reads : E

> "The lessees shall with the previous permission in writing of the State Government be at liberty to make dams, cross streams, cut canals, make water-course irrigation works, construct roads, railways and tramways and do any other works useful or necessary for the purposes of the business connected with these presents in or upon the leased area provided that they are in accordance with the plan approved by the State Government and also with the like approval to widen or deepen any existing creeks or channels of waterways for the purposes of the said business and all timbers required for the above purposes shall be allowed half royalty rates in the case of timbers of reserved species and free in case of timbers of unreserved species by the State Government." F

There is also provision for renewal of the lease deed which savours, again, of a transaction of real property since renewals cannot obtain for sales. G

The face value of these features tends to fix the transaction as a lease but, lift the veil and feel the reality behind, Shri Shroff urged us, only to discover that the lease is no more than a simple sale of goods, viz., of bamboo and salai wood. He dismissed tags and labels as of the least consequence when the heart of the matter turned on the crucial terms of the document which were, in his submission, loudly H

A obtrusive of the 'sale-of-goods' character of the transaction. Of course, if in essence there is a sale of goods covered by the deed, we have to locate the taxing event which occurs when the title to the goods is transferred. The description of the document as a lease 'deed', the reference to royalty, the right to construction of buildings etc., cannot hamper a contrary conclusion if there are luminous characterstics of a 'sale of goods', in what is but a lease deed in name. From B this angle Shri Shroff has highlighted certain principal provisions in the deed. There is no doubt, he says, that if one scans the document closely, one finds that possession of the land is not given; which means that parties have slurred over the demise part of it notwithstanding the dubious expressions used. What is authorised under the deed is the 'exclusive liberty' to enter upon the leased area to fell, cut or extract bamboos and salai wood and to remove, store and utilise the same for C meeting the full requirements of the Paper Mill. This reads more like a sale of standing timber coupled with a licence to enter and do certain things on another's land.

Counsel also emphasised that an insightful understanding of cl. 2(g) of the deed would bring out the price fixed for the goods sold viz., 'a flat rate of Rs. 6/- per ton on air dry bamboo and Rs. 2/- per D ton on air dry salai-wood....actually extracted and removed from the leased area on the weighment at the weighbridge of the said Paper Mill and in case of export at the weighbridge or weighbridges to be installed at suitable places by the lessees, in which case the royalty shall be Rs. 7/8/0 (rupees seven and eight annas) and Rs. 2/8/0 (rupees two and annas eight) per ton of air dry bamboo and salai wood respectively. In this context supportive strength was sought to be E drawn from cl. 2(h) which reads :

> "(h) The lessees shall keep an account of all bamboos and salai wood cut and removed in the manner as may mutually be settled and such account shall be open to inspection by the Forest Officer authorised in this behalf by the Divisional Officer concerned."

F Shri Shroff went to the extent of saying that the real nature of the transaction was disclosed in the deed itself in clause 2(k) :

> "(k) The lessees in conducting their operation on the leased area shall not in any way interfere with the surface of land save and in so far as may be necessary in connection with and for the purposes of this *licence*."

G

Clause 4 bears on its bosom, in his submission, the imprint of a contract for sale of goods and it may be read :

> "4. "Without prejudice to the provisions of this lease, the rights, liberties and privileges of the lessees hereinbefore mentioned shall extend only to bamboos and salai wood within the leased area and nothing herein shall in any way be H deemed to authorise the lessees to interfere with the working of the forest areas within the leased area or the rights, liberties, privileges of other contractors of the said forest lands."

We are considerably impressed with this analysis. The upshot of the whole transaction is that, for a price fixed, bamboos and salai wood are permitted to be removed from the forest of the appellant by the respondent. For the exercise of the right under this contract, certain necessary licences are conceded. It is made perfectly plain that the possession of the land *qua* land is not given, and there is a fool-proof provision that the rights of the 'lessees' *shall extend only* to bamboos and salai woods within the leased area and nothing herein shall in any way be deemed to authorise the lessees to interfere with the working of the forest area....of other contractors of the said forest lands. Can there be a lease without exclusive possession of the lands ? Can there be a lease to A of lands when the only right is to cut certain species of timber above a certain height and according to stipulated conditions ? Can there be a lease of lands where similar right to cut timber from the same land co-exist in other contractors ? There are more circumstances than these, but we need not be exhaustive, especially when we agree with the conclusion reached by the High Court.

We are satisfied that despite its description, the deed confers in truth and substance a right to cut and carry timber of specified species. Till the trees are cut, they remain the property of the owner, namely the appellant. Once the trees are severed, the property passes. The 'Royalty' is a feudalistic euphemism for the 'price' of the timber. We may also observe that the question before us is not so much as to what nomenclature would aptly describe the deed but as to whether the deed results in sale of trees after they are cut. The answer to that question, as would appear from the above, has to be in the affirmative.

Now to a brief reference to two out of several cases cited at the Bar.

Sri Sen relied heavily upon *Raja. Bahadur Kamakshya Narain Singh*(1). That was a case under the Income-Tax law. The assessee there received large payments by way of royalty under various mining leases. The leases purported to be for 999 years and related to the coal-mining rights set out in the Schedule to the lease. The lessees were to pay a sum by way of salami or premium and an annual sum as royalty computed at a certain rate per ton on the amount of coal raised and coke manufactured. It was contended on behalf of the assessee that the sums received as salami and royalty did not constitute 'income' but were capital receipts, representing the price of the minerals removed. There was also a provision for minimum royalty which was pressed into service by the party. The Judicial Committee held that the royalty payable under the lease was not the price of the actual coal extracted but represented compensation which the lessees paid to the lessor for that species of occupation which the contract allowed and it was therefore 'income' from other sources' within the meaning of the relevant Income-tax Act. We must point that the legal setting in which a question is considered colours the ratio of the case. The Judicial Committee was considering an issue arising under the Income Tax Act and, interpreting the clauses of a deed with particular terms, to ascertain whether the payments made thereunder fell within the meaning of 'income' understood in its broadest connotation

(1) [1943] 11 I.T.R. 513.

A in England and in India. Construing, as we do, a special statute and a differently worded deed and the signification of the words used therein, we are unable to draw any legitimate instructional inferences from a decision contextually different, concerned with a different branch of law; and dealing with different issues although with seeming resemblances in superficial respects.

B Another decision which, perhaps, has some helpful reasoning, is by this Court in *Badri Prasad*(1). We need not discuss the details of that case except to point out that it has been recognised, in that ruling, that trees which are to be severed before sale or under the contract of sale are 'goods' for the purposes of the Sales of Goods Act. On the facts of that case, property in the cut timber could pass to the plaintiff under the contract at the earliest when the trees were felled C but before that happened the trees had vested in the state under an agrarian reform measure. The crutches of case law are not always necessary in Court.

While direct light on the legal situation present before us is not available from *Badri Prasad,* or *Kamakshya Narain Singh,* (supra) there is not the slightest doubt that going by the definition of 'sale of goods' under s. 2(7) of the Sale of Goods Act and of s.2(g) of the D MPGST Act, standing timber is 'movable property' if under the contract of sale they are to be severed. But the severance must take place when the timber still vests in the contracting party.

Ultimately, the case before us has to be decided on the facts and the law which form the backdrop to the decision. We have already held that the crucial fact to be found before we can designate the E transaction as 'sale of goods' is to scan and see whether the 'lease deed' really deals with sale of timber.. We are clear that there is sale of bamboo and salai wood under the contract and, in the contemplation of the parties they are to be cut and severed, pursuant to the contract itself. It follows that the finding of the High Court on this point is correct.

F The appeal deserves to be allowed on account of the statutory amendment. The Madhya Pradesh Legislature had taken great care and responded with prompt attention to deal with a situation where considerable revenue would be lost to it on account of inadequate expression of its intendment in the MPGST Act. A diligent and considered amendment has fulfilled the legislative purpose. Had the State lost the appeal before us on another point, that is as to whether royalty G was 'price for sale of goods',—the whole amendatory effort would have been an exercise in futility or a legislative *brutum fulmen.* In view of our finding that there is a 'sale of goods' under the contract, the State is entitled to succeed.

Counsel for the respondent, when we briefly indicated our mind, and even otherwise by way of abundant caution, rightly urged that his client had a good case for reduction of the quantum of tax even if H sales tax was payable by the Forest Department which could be shift-

(1) [1969] 2 S.C.R. 380.

ed to the respondent by virtue of s.64A of the Sale of Goods Act. He prayed for an opportunity to establish that he was being called upon to foot a larger bill than was legally tenable. We regard this a reasonable request and, indeed, Shri Shroff, for the State, has very rightly agreed with this prayer of the respondent. For one thing, the amending Bill whereby the liability was being *de novo* fastened was enacted into law after the judgment of the High Court. Read with s.82 of the Indian Forests Act, the amount was being recovered as if it were land revenue. This process deprived the respondent of his right to challenge the quantification of the tax. It is fair—and the State agrees to be fair—that the respondent should be enabled to prove his case that the sum claimed was much higher than could be legitimately recovered. Shri B. Sen brought to our notice that the rate of tax on sales to a registered dealer, if the commodity was to be consumed within the State, in view of Section 8 of Madhya Pradesh General Sales Tax Act for manufacturing purposes was less than the general rates. The appellant, on the other hand was seeking to recover at the higher rate. Moreover, even the lesser rate varied over the years from 1% to 2% and on to 3%. Thus the arithmetics of the case had also to be gone into before the actual sum due from the Forest Department to the Sales Tax Department was fixed. More could not be exacted from the respondent.

These reasons persuade us to allow the appeal and remand the case for consideration of the *quantum of tax* that the State, in the Forest Department, was legally liable to pay as a dealer, to the Sales Tax Department.

Shri Shroff took up a point that when the Forest Department made a demand on the respondent and required him to furnish a declaration necessary to reduce the rate of tax, the latter ignored the request. This, according to him, had an impact on the eventual liability. We do not propose to investigate this aspect at the present stage but leave it to be raised by the State before the High Court.

In this view, we allow the appeal and remand the case for disposal after recording a finding on the limited issue/issues above indicated. We may mention that although the High Court has not properly adjudicated upon the recoverability of the Sales Tax as and by way of arrears of land revenue, it is not necessary to go into the matter afresh especially because once the tax amount is settled, the payment by the respondent will follow. However, we are not upsetting the finding of the High Court in this behalf in the present case.

The appeal is allowed and remanded, to be disposed of in the light of the directions given above. Parties will bear their costs throughout.

P.B.R. *Appeal allowed.*